



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

June 15, 2001

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Final Revisions to the Model RD/RA Consent Decree

FROM: Barry Breen, Director /s/
Office of Site Remediation Enforcement (OSRE)
Office of Enforcement and Compliance Assurance (OECA)
U.S. Environmental Protection Agency

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TO: Regional Counsel, Regions I-X, EPA
Waste Management Division Directors, Regions I-X, EPA
Office of Regional Counsel Branch Chiefs, Regions I-X, EPA
Superfund Program Branch Chiefs, Regions I-X, EPA
Environmental Enforcement Section Attorneys, ENRD, DOJ
Environmental Defense Section Attorneys, ENRD, DOJ

We herewith transmit to you a revised version of the [CERCLA Model RD/RA Consent Decree](#) which incorporates a number of modifications to the Model that were proposed by various government and private sector commenters, evaluated by a workgroup comprised of EPA and DOJ attorneys, and approved by OECA-OSRE and ENRD-EES management. Also attached is a redline/strikeout version of the new revisions which highlights how the May, 2000 version of the Model has been modified. The principal purpose of this most recent set of revisions to the Model is to fix, fine tune, or clarify Model language that had been identified as unclear or otherwise problematic by those commenting on the Model.

While most of the revisions adopted herein are substantive in nature, some are of relatively modest significance. We would especially direct your attention to the following changes, which represent the more significant departures from or clarifications of past practice:

- (1) language in Section VI, Paragraphs 10, 11, and 12, and Section VIII, Paragraph 22, updating the Model's QA/QC requirements in keeping with (a) OSRE's commitment to do so following an audit by the Office of Research and Development in 1999, and

(b) an EPA directive entitled “Policy and Program Requirements for the Mandatory Agency-wide Quality System,” No. 53060.1, issued May 5, 2000,

(2) language in Section IX, Access And Institutional Controls, Paragraphs 26 and 27, which makes clear that, when settling defendants are required to convey an easement to the United States or other appropriate grantee (for purposes of ensuring access rights or the right to enforce land/water use restrictions), they will generally be required to purchase a title insurance policy (or provide other acceptable evidence of title) for the property interest in question,

(3) language in Section XXI, Covenants Not To Sue By Plaintiffs, Paragraph 94, which reserves the United States’ right to assert future claims against settling defendants based on their activities as owner/operators or transporters (not just as generators) after execution of the consent decree,

(4) language in Section XXII, Covenants By Settling Defendants, Paragraph 97, which (a) makes clear that settling defendants’ covenant not to sue specifically includes a waiver of takings claims and claims under the Equal Access to Justice Act, and (b) allows settling defendants to assert claims against the United States (notwithstanding their covenants not to sue) where such claims arise out of the same response action, response costs, or damages the United States is seeking when it invokes the standard reopeners or one of the General Reservations of Rights,

(5) language in Section XXV, Retention Of Records, Paragraphs 110 and 112, which narrows settling defendants’ record retention responsibilities in a variety of ways, and

(6) language in Section XXXI, Modification, Paragraph 119, which allows modifications to the Statement of Work which do not necessitate a ROD amendment to go forward upon agreement of the parties but without the approval of the court.

With respect to the remaining changes we commend the attached redline/strikeout version of the Model for your close scrutiny.

The revised Model language will become effective on the date of this memorandum. The new Model language should be employed not only in future RD/RA consent decrees but also in those under negotiation on the date of this memorandum. The Regions are also advised that they should incorporate the new QA/QC requirements adopted in the revised Model into any Statements of Work they generate in the future.

If you have questions regarding these revisions to the Model RD/RA Consent Decree, please contact Dan Beckhard, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice, (202) 616-7921, or Steve Botts, Regional Support Division, Office of Site Remediation Enforcement, Environmental Protection Agency, (202) 564-4217.